

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2010

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.No.37326 of 2006

K.N.Manoharan

... Petitioner

versus

1.The State of Tamil Nadu rep. by its  
Secretary to Government,  
P & AR Department, (Personnel I) Department,  
Fort St. George, Chennai - 600 009.

2.The State of Tamil Nadu rep. by its  
Secretary to Government,  
Industries (OP I2) Department,  
Fort St. George, Chennai - 600 009.

3.The Secretary,  
Tamil Nadu Public Service Commission,  
Chennai - 600 002.

... Respondents

PRAYER: This writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of Original Application in O.A.No.8153 of 1998 with a prayer to issue a writ of Certiorari to call for the records on the file of the third respondent herein in connection with the order passed by him in Memorandum No.10018/PSD/C1/90 dated 22.09.1998 and quash the same.

For Petitioner : Mr.K.Venkatramani SC for  
Mr.M.Muthappan

For Respondents 1 & 2: Mr.S.Shiva Shanmugam  
Government Advocate

For Respondent 3: Mr.M.Bhaskaran

O R D E R

The Original Application in O.A.No.8153 of 1998 before the Tamil Nadu Administrative Tribunal is the present writ petition.

2.The petitioner passed +2 Examination in April 1993 and thereafter, he got qualified by passing lower and higher grade tests in Typewriting. He applied for the post of Typist in Group IV

Service pursuant to advertisement No.7/93 dated 06.02.1993 of the third respondent. The petitioner participated in the written examination and he was selected. He applied for the post of Typist under the physically handicapped quota. He produced a certificate dated 31.07.1990 issued by the Special Medical Board for the Physically Handicapped, Vellore. It was certified that the petitioner suffered a loss of 70% hearing in both ears. It was also stated that the disability was based on the certificate issued by the Special Medical Board. The petitioner was selected by the Tamil Nadu Public Service Commission and was posted to Tamil Nadu Secretariat Service as Typist. Based on the said Certificate, the first respondent issued appoint order dated 30.09.1994 to the petitioner allotting him to the Industries Department, Fort St. George, Chennai - 600 009. The second respondent issued the appointment order dated 04.11.1994 appointing him as Typist. He joined duty on 30.11.1994. He was directed to appear before the Medical Board attached to the Special Employment Exchange, Chennai. However, he was not informed about the result and again he was asked to appear before another Medical Board. Accordingly, he appeared before another Medical Board also.

3.In these circumstances, the third respondent issued the impugned order dated 22.09.1998 cancelling the appointment of the petitioner on the ground that both the Medical Board found that he was not a physically handicapped person, as his hearing loss is only 37.5%.

4.The petitioner filed Original Application in O.A.No.8153 of 1998 (W.P.No.37326 of 2006) praying to quash the order dated 22.09.1998 of the third respondent.

5.While admitting the Original Application, the Tribunal granted interim order and the petitioner continues in service, in view of the interim order. The third respondent filed reply affidavit.

6.Heard Mr.M.V.Muthappan, learned counsel for the petitioner and Mr.S.Shiva Shanmugam, learned Government Advocate for the respondents.

7.When the matter was posted earlier, this Court directed the learned counsel for the third respondent to produce the certificates referred to in the impugned order. Accordingly, the learned counsel produced the certificates. The learned counsel also submits that since the petitioner does not suffer 40% disability and on the other hand, he suffers only 37.5% disability, he cannot be considered for employment as a physically handicapped person. He has reiterated the stand taken in the reply affidavit.

8.The learned senior counsel for the petitioner submits that the Special Medical Board for Physically Handicapped Persons, Vellore, certified that the petitioner is suffering 70% hearing disability and that the learned senior counsel also produced the certificate issued by the Medical Board at Vellore that the petitioner is suffering 70% hearing disability. In view of the said certificate, the learned senior counsel submits that the certificates issued by the other Medical Board could be ignored. It is submitted that since the genuineness of the first certificate was not in doubt, the third respondent could not have asked the petitioner to appear before the Medical Board and could not have passed the impugned order based on the certificates issued by those Medical Boards.

9.The learned senior counsel also has pointed out that there are some discrepancies in the certificates issued by two Medical Boards, to which the third respondent referred the petitioner for assessment. According to the first Medical Board to which the third respondent referred the petitioner, it is certified that the petitioner has 45% disability in the right ear and 30 % disability in the left ear. On the other hand, the certificate issued by the second Medical Board certified that the petitioner suffers 37.5% disability in both the ears. The learned counsel also relies on the observations made by the second Medical Board recommending to retain the petitioner in service. The learned Senior Counsel has also relied on a decision of the Honourable Apex court in Union of India and others Vs. K.P.Tiwari reported in (2003) 9 SCC 129 and also a decision of the Honourable First bench of this Court in W.A.No.1559 of 2009 dated 03.11.2009 as well as P.Mahavishnu Vs. The General Manager, Tamil Nadu State Government Transport Corporation reported in 2008 (3) T.N.C.J. 367 (Mad) (DB).

10.I have considered the submissions made on either side. The Medical Board for Physically Handicapped, Vellore, certified that the petitioner suffers 70% permanent hearing disability and that was acted upon and the petitioner was selected and appointed to the Secretariat Service. Since the petitioner was referred to the Medical Board attached to the Special Employment Exchange, the Medical Board gave another certificate. That certificate states that the petitioner suffers 45% hearing disability at the right ear and 30% hearing disability at the left ear. Since he does not suffer 40% disability in both ears, he was not eligible for being considered as a physically handicapped person, according to the Medical Board. In these circumstances, the third respondent again referred him to another Medical Board. This Medical Board found that the petitioner suffers 37.5% hearing loss in each of the ears. The second Medical Board pointed out that since the percentage of hearing loss is only 37.5%, he does not come under the category of physically handicapped person. The relevant passage found in the



second medical certificate is extracted here under:

"Since he has conductive hearing loss in both ears with good speech discrimination and the percentage of hearing loss is only 37.5% he does not come under the category of physically handicapped.

However, having given the enjoying the rights and privileges occupation not in much with his knowledge, we desire the authorities, should ponder and consider with mercy to rehabilitate regarding the resent status about the position of his job."

11.I am of the view that since the genuineness of the first certificate issued by the Medical Board, Vellore, is not in doubt, the petitioner need not be removed after 15 years of service, particularly when two subsequent Medical Boards found that the petitioner suffers defective hearing at 37.5% and not 40% to become eligible for being considered under physically handicapped persons quota. I have perused the judgment of the Honourable Apex Court Union of India and others Vs. K.P.Tiwari reported in (2003) 9 SCC 129. Para 4 of the said judgment is extracted hereunder.

"4.It is unnecessary in this case to examine either question of law or fact arising in the matter. Suffice to say that the respondent has been appointed now and has been in service for more than five years. We do not think, it would be appropriate to disturb that state of affairs by making any other order resulting in uprooting the respondent from his livelihood."

12.I have also perused the judgment in W.A.No.1559 of 2009. Para 6 of the judgment is extracted here under:

"6.We have noted the submissions of both the parties. We quite see the force in the submission of the learned Government Pleader. Compassionate appointment is not meant for persons who do not in fact face the difficulty. It is meant to tide over the immediate difficulty of the family. For a moment, we do not approve the manner in which he has obtained the employment. At the same time, it is also to be seen that in the instant case nearly after four years, the State Government has moved to cancel the appointment. Nothing is placed on record as to what action was taken against the officers, who are responsible for the disputed appointment and delayed action on the part of the Government. Almost similar

facts were there in the two matters which have been referred herein in the sense that the persons were sought to be removed after passing of good number of years. Besides, by now, nearly 15 years have gone since the time the appellant has been initially appointed, and, therefore, we do not think that it will be fair to disturb his employment."

13.If those two judgments are applied to the facts of this case, I am of the considered view that the impugned order is liable to be interfered with. Accordingly, the impugned order is quashed and the writ petition is allowed. No costs.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

vsm

To

1.The Secretary, to  
Government of Tamil Nadu,  
P & AR Department, (Personnel I) Department,  
Fort St. George,  
Chennai - 600 009.

2.The Secretary, to  
Government of Tamil Nadu  
Industries (OP I2) Department,  
Fort St. George,  
Chennai - 600 009.

3.The Secretary,  
Tamil Nadu Public Service Commission,  
Chennai - 600 002.

+1cc to Mr.T.Ayngaraprabhu,Advocate Sr 5361

RSI (CO)  
km/24.2.

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